

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**MARY D. LUCERO,**

**Plaintiff,**

**vs.**

**Civ. No. 08-868 RLP**

**MICHAEL J. ASTRUE, Commissioner  
of the Social Security Administration,**

**Defendant.**

**MEMORANDUM OPINION and ORDER AWARDING FEES  
PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT**

**THIS MATTER** comes before the Court on Plaintiff's Motion for an award of attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) in the amount of Three Thousand Five Hundred Forty-nine and No./100 Dollars (\$3,549.00). [Docket No. 21]. In his Response, Defendant states that he has no objection to the amount of fees as requested, but requests that the award be payable to Plaintiff as prevailing party. [Docket No. 22].

The plain language 28 U.S.C. § 2412(d)(1)(A) states, the "court shall award to a prevailing party ... fees and other expenses." The Tenth Circuit has previously found that "an EAJA award is to the claimant." McGraw v. Barnhart, 450 F.3d 493, 497-498 (10th Cir.2006).

The court **FINDS:**

- (1) That Plaintiff's Request for Fees under the Equal Access to Justice Act is reasonable,  
and
- (2) The proper payee for fees awarded under the Equal Access to Justice Act is Plaintiff.

**IT IS THEREFORE ORDERED** that Plaintiff's Motion for attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), in the amount of Three Thousand Five Hundred Forty-nine and No./100 Dollars (\$3,549.00) is granted.

**IT IS FURTHER ORDERED** that the Commissioner shall make such fees payable to Plaintiff, but shall remit said fees to Plaintiff by sending payment in care of the offices of her attorney.

**IT IS FURTHER ORDERED** that in the event of a subsequent award of fees pursuant to 42 U.S.C. §406(b), the refund provision of Weakley v. Bowen, 803 F.2d 575, 580 (10<sup>th</sup> Cir. 1986) will apply.

A handwritten signature in black ink, appearing to read 'Richard L. Puglisi', is written over a horizontal line.

RICHARD L. PUGLISI  
Chief United States District Judge  
(sitting by designation)